



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable I. Predecki
County Auditor
Galveston County
Galveston, Texas

Dear Sir:

Opinion No. 0-5328
Re: Constitutionality of Senate
Bill No. 286, Acts of the
48th Legislature, Regular
Session, 1943.

Your letter of May 22, 1943, requesting the opinion
of this department on the above stated matter, reads in part
as follows:

"On August 18th, 1941, your Opinion No. 0-3790
held unconstitutional H. B. #436, enacted by the
47th Legislature on the subject mentioned above.
At the regular session of the 48th Legislature S.
B. #286 was enacted. This bill attempts to amend
H. B. #73, enacted at the first called session of
the 33rd Legislature.

"I find that H. B. #73 was enacted as a spe-
cial law, Chapter 10, on Page 226 of the General and
Special Laws enacted at the first called session of
the 33rd Legislature.

"Your opinion is respectfully requested as to
the constitutionality of both H. B. #73 and the
amendment as enacted, referred to as S. B. #286,
Acts of the 48th Legislature.

"In Galveston County, the Commissioner repre-
senting Prec. #2 is entirely within the city limits
of Galveston and there are no roads in this Pre-
cinct. The Seavall built by Galveston County and
the Boulevard, which is used as a driveway, is part

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of the protective work and is partially within the limits of Precinct #2.

"Should you find this bill constitutional, please advise me how I am to determine whether the Commissioners have incurred the expense provided for, when on official duties and when for personal use.

". . . ."

Senate Bill No. 286, Acts of the 48th Legislature, Regular Session, 1943, reads as follows:

"An Act to amend House Bill No. 73, an Act passed by the First Called Session of the 33rd Legislature of the State of Texas to create a more effective road system for Galveston County, Texas; making county Commissioners of said county ex-officio precinct road commissioners and prescribing their duties as such etc; by adding Section 2a providing for additional duties of the County Commissioners and by adding Section 2b providing for the payment of traveling expenses to the County Commissioners, for the use of their private automobiles, when incurred only in the performance of their official duties pertaining to the maintenance of the public roads and highways of said county; and declaring an emergency.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"Section 1. That House Bill No. 73, passed at the First Called Session of the 33rd Legislature of the State of Texas be amended by adding thereto Section 2a to read as follows:

"Section 2(a). The County Commissioners shall make an inspection of the public roads, highways, and other appurtenances pertaining thereto within their respective precincts and within their jurisdiction during or immediately after the occurrence of any storm, flood or high tide, the occurrence of which would probably damage or obstruct

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said public roads, highways and appurtenances. If such inspection reveals that said roads, highways and appurtenances have been damaged or obstructed in any County Commissioners precinct, it shall be the duty of said Commissioner to close said road, highway or appurtenance or to install adequate facilities and/or warning signs at or near the scene of said damage or obstruction, sufficient to warn the public thereof, and to proceed as soon as is possible thereafter to have such damage repaired and obstruction removed therefrom.'

"Sec. 2. That House Bill No. 73, passed at the First Called Session of the 33rd Legislature, of the State of Texas be amended by adding thereto Section 2b to read as follows:

"Section 2(b). The County Commissioners of Galveston County, Texas, are each hereby allowed actual traveling expenses not to exceed the sum of Fifty (\$50.00) Dollars per month for the use of their private automobiles, provided however that such traveling expenses shall be allowed only when incurred by the County Commissioners in the performance of their duties pertaining to the maintenance of the public roads and highways of said county. Each county commissioner incurring such expense shall file a claim with the Commissioners Court, and, if said claim is in order, same shall be approved, allowed and ordered paid by said court as a claim against the county. Said claim shall be paid out of the road and bridge fund of said county in the same manner as provided by law for the payment of other claims from said fund.'

"Sec. 3. The fact that Galveston County is now without an adequate road law, and is urgently in need of such a law, creates an emergency and an imperative public necessity, that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."

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House Bill No. 73, Acts of the 33rd Legislature, First Called Session, 1913, was enacted as a special road law under the provisions of Article VIII, Section 9, of the Constitution of this State. Senate Bill No. 286, Acts of the 48th Legislature, Regular Session, 1943, also was enacted as a special law for Galveston County under the provisions of Article VIII, Section 9, of the Constitution, amending House Bill No. 73, supra.

It is stated in the case of Crow v. Tinner, 47 S.W. (2d) 391 (Tinner v. Crow, 78 S.W. (2d) 588):

"Was the law enacted for the better maintenance of roads in Hill county? The Legislature by house bill No. 500 had placed new and additional burdens on the commissioners with reference to the roads of Hill county. The purpose was to secure a better system of roads for the county. It was apparent that the commissioners would incur extra expense in discharging these new duties. In return, the amendment in question undertook to compensate them out of the road and bridge fund for the expenses so incurred. The use by the commissioners of their private automobiles for the accomplishment of this purpose and in connection with such work clearly had to do with the 'maintenance of the public roads' of the county, and if so, the Legislature had the authority under the Constitution by a local law to authorize the use of a part of the road and bridge funds to accomplish this purpose. A careful supervision of the roads by the commissioners was as essential to the maintenance of the roads and the creation of an efficient system as would have been the supervision thereof by a civil engineer. If the commissioners were to assume and discharge these burdens, it was essential that they be provided with the means of doing so. This could have been done either by providing the means of conveyance or by compensating the commissioners for the expenses incurred by them in doing so.

"It is true that the building and maintenance of roads is a part of the affairs of a county

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and that a special law regulating the maintenance of roads is to a certain extent a law regulating the affairs of the county; but, if such special law undertakes to regulate only that part of the affairs of a county pertaining to the maintenance of roads, it is not prohibited by the Constitution. Chief Justice Phillips in *Altgelt v. Gutzeit*, 109 Tex. 123, 201 S. W. 400, 401, said: 'No doubt the Legislature in the passage of local road laws, may, within proper bounds, provide compensation for extra services to be performed by those officials (the commissioners) where uncontrolled by general laws and required by such local laws and directly connected with the maintenance of the public roads.' (See *Kitchens et al. v. Roberts*, 24 S.W. (2d) 464, *Jameson, et al. v. Smith*, 161 S.W. 520, *Austin Bros. v. Patton*, 288 S.W. 182, and *Quinn v. Johnson*, 91 S.W. (2d) 499.)

As heretofore stated Senate Bill No. 286, supra, is a special road law and was enacted as such. This Act is limited to the maintenance of public roads and imposes added and new duties not imposed by general law and provides for reimbursement of the county commissioners for certain expenses incurred by them as authorized by said Act. For the reasons stated here and the foregoing authorities we regard said Senate Bill No. 286 constitutional, and so hold.

You also inquire as to the constitutionality of House Bill No. 73, supra. What has been said with reference to Senate Bill No. 286, is equally applicable to House Bill No. 73. Therefore, it is our opinion that said House Bill No. 73 is constitutional.

You further ask in effect, if the bill is found to be constitutional, how are you to determine whether the commissioners have incurred the expense provided for? Senate Bill No. 268 expressly provided that each commissioner incurring such expense shall file a claim with the commissioners' court, and, if such claim is in order, same shall be approved, allowed and ordered paid by said court as a claim against the county. Said Act further provides that such traveling expense shall be allowed only when incurred by the county commissioners in the performance of their duties pertaining to the maintenance of public roads and highways of said county.

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It is our opinion that in view of the Act under consideration the commissioners' court determines the amount of expense incurred for traveling expenses by the county commissioners for the use of their private automobiles and that when a claim for such expenses is filed with the commissioners' court, if said claim is in order, said court has the legal authority to approve, allow and order said claim to be paid.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*
Ardell Williams
Assistant

AW:db

APPROVED JUN 8, 1943
Gerald B. Mann

ATTORNEY GENERAL OF TEXAS

